IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 279 of 2006

Date of decision : 5.7.2006

Dharam Chand ..... Appellant

Versus

Makhauli Ram ..... Respondent

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellant: Mr. G.R. Palsara, Advocate.

For respondent : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the records.

2. Plaintiff / respondent filed a suit for possession of land bearing Khasra No. 552, measuring 0-18-10 Bighas, against the appellant / defendant, claiming that he was owner of the said land and that about 18 years back his father had allowed the appellant / defendant, on latter's request, to install a rice-husking machine on the said land. It was stated that the earnings from the operation of the rice-husking machine were

Whether reporters of Local Papers may be allowed to see the Judgment?

agreed to be shared by the appellant / defendant and the father of the respondent / plaintiff. It was further alleged that the appellant / defendant had stopped sharing the earnings and, therefore, the plaintiff was entitled to take back the possession of the suit land.

3. Appellant / defendant contested the suit and denied that there was any partnership between the plaintiff's father and himself (appellant / defendant) or that the earnings from the operation of the rice-husking machine were ever shared. Instead, he took the plea that the suit land had been given in exchange to him by the father of the plaintiff. In the alternative, he took the plea of adverse possession.

4. Various issues were framed by the trial Court. Ultimately, findings were returned that neither any exchange had taken place nor had the appellant / defendant acquired title by prescription and consequently the suit for possession was decreed. Appeal was filed before the learned District Judge against the decree of the trial Court. That appeal has been dismissed and the judgment and decree of the trial Court affirmed.

5. It is urged by the learned counsel representing the appellant / defendant that the respondent / plaintiff failed to prove his plea that the appellant / defendant was permitted to install the rice-husking machine on the suit land by his father, as alleged in the plaint, and that when this plea had not been proved, the two Courts below could not have lawfully decreed the claim of the respondent / plaintiff.

6. I do not find any merit in the contention. Even if it be assumed that the respondent / plaintiff failed to prove the aforesaid plea,

that could not have been a ground for the dismissal of his suit. A person, having title to the immovable property, can recover the possession of his property from a third person, who does not have any lawful right to remain in possession, just by proving his title. The only hitch in the way of his succeeding can be when the third person in possession has acquired title, on account of being in hostile possession for a period of twelve years continuously and without interruption. In the present case the two Courts below have given concurrent finding that the appellant / defendant has not acquired title by prescription. His plea that the land was given in exchange to him by the father of the respondent / plaintiff, has also been turned down by the two Courts below.

7. In view of the above stated position, I do not think any substantial question of law raises. So, the appeal is dismissed.

July 5, 2006 (BC) **(Surjit Singh)**
Judge